

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

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COURT OF APPEALS
DIVISION TWO

IN RE EMMANUEL P.

) 2 CA-JV 2007-0085

) DEPARTMENT B

) MEMORANDUM DECISION

) Not for Publication

) Rule 28, Rules of Civil

) Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 17082201

Honorable Jane L. Eikleberry, Judge

AFFIRMED

Barbara LaWall, Pima County Attorney
By Ellen R. Brown

Tucson
Attorneys for State

Sanders & Sanders, P.C.
By Ken Sanders

Tucson
Attorneys for Minor

E C K E R S T R O M, Presiding Judge.

¶1 Emmanuel P. admitted charges of aggravated assault with a deadly weapon and escape, two of the three counts alleged in two separate delinquency petitions filed against him in May and September 2007. The juvenile court adjudicated Emmanuel delinquent,

revoked the probation imposed on him following a previous adjudication, and ordered him committed to the Arizona Department of Juvenile Corrections (ADJC) for a term not to exceed his eighteenth birthday in June 2008. On appeal, Emmanuel challenges the disposition order, arguing the juvenile court abused its discretion by committing him to ADJC without exploring a less restrictive alternative as directed by the supreme court's advisory guidelines for commitment.¹ Finding no abuse of discretion in the juvenile court's application of the commitment guidelines or its disposition order, we affirm.

¶2 A juvenile court has broad discretion in determining the proper disposition of a delinquent juvenile. *In re Maricopa County Juv. Action No. JV-510312*, 183 Ariz. 116, 118, 901 P.2d 464, 466 (App. 1995). We will not disturb a disposition order absent an abuse of that discretion. *In re Themika M.*, 206 Ariz. 553, ¶ 5, 81 P.3d 344, 345 (App. 2003). In the analogous context of adult sentencing, an abuse of discretion occurs if the court acts arbitrarily or capriciously or fails to conduct an adequate investigation into the facts relevant to sentencing. *State v. Stotts*, 144 Ariz. 72, 87, 695 P.2d 1110, 1125 (1985). In a delinquency case, a juvenile court may abuse its discretion by failing to consider the guidelines for commitment. *See In re Melissa K.*, 197 Ariz. 491, ¶ 14, 4 P.3d 1034, 1038 (App. 2000). The guidelines “do not mandate that the less restrictive alternative be ordered.” *In re Niky R.*, 203 Ariz. 387, ¶ 19, 55 P.3d 81, 85 (App. 2002). Rather, they require the juvenile court to “[g]ive special consideration to the nature of the offense, the

¹Ariz. Code of Jud. Admin. § 6-304(C)(1)(c).

level of risk the juvenile poses to the community, and whether appropriate less restrictive alternatives to commitment exist within the community.” Ariz. Code of Jud. Admin. § 6-304(C)(1)(c).

¶3 After escaping from a juvenile detention work crew, Emmanuel cut the victim’s neck with a box cutter, an injury that required twenty-eight stitches to repair and left the victim permanently scarred. Psychologist Thomas Fisher, who evaluated Emmanuel at Emmanuel’s request, reported that his “Juvenile Profile is replete with charges of runaways, domestic violence, disorderly conduct, petty damage, escape, probation violations and aggravated assaults,” a summary the record supports. Dr. Fisher described Emmanuel’s rendition of the aggravated assault as follows: “[Emmanuel] then gave a twisted version of how he ‘defended’ his girlfr[ie]nd from her supposed ex-boyfriend and that when this other young man ‘pushed her, I cut him in the neck with a boxcutter defending her.’”

¶4 Dr. Fisher nonetheless recommended that Emmanuel be placed on “upper levels of probation supervision.” Emmanuel’s probation officer and the state recommended commitment to ADJC as the least restrictive means of protecting the community. The state characterized Emmanuel as an “extreme danger to the community,” “noncompliant on probation,” “defiant,” “deceitful,” and “a high flight risk.”

¶5 Emmanuel contends the juvenile court abused its discretion by failing to follow Dr. Fisher’s recommendation that he be placed on juvenile intensive probation (JIPS), claiming the court should have at least attempted to find a “non-ADJC” treatment program

for him. He seems to suggest that the court further abused its discretion by reading only a summary of Dr. Fisher's report, rather than the entire report. Not only did counsel not object when the court stated it had "read a summary of [the report] with the diagnoses," but she presented an argument detailing the salient portions of the report, including Dr. Fisher's recommendation that Emmanuel be placed on JIPS.

¶6 The court nonetheless committed Emmanuel to ADJC and articulated the following reasons:

I have considered all the information that's been provided to me, and I particularly considered the injuries done to [the victim]. [The victim] has got a permanent physical injury. He's got permanent scarring. He can't move his neck as well as he should be able to. He's emotionally scarred.

The file is full of assaultive behavior by Emmanuel. You have been completely noncompliant with probation. Everything we've tried to do for you, you have refused to comply with. Accordingly, it's ordered that the minor's probation is revoked. The minor is committed to the Arizona Department of Juvenile Corrections until his 18th birthday.

The reasons are[:] that he's committed a delinquent act, which requires—the protection of the community requires that he be placed in a secure facility. Commitment is a final opportunity, in this case, for rehabilitation, a final opportunity to hold Emmanuel accountable for his serious delinquent acts.

The nature of the offense and the level of risk that Emmanuel poses to the community require[] commitment, and there's no less restrictive alternative that is appropriate. The juvenile has engaged in a pattern of conduct characterized by persistent delinquent offenses that cannot be controlled in a less secure setting as demonstrated by the previous use of other alternatives.

¶7 The record shows the juvenile court considered, in the context of the commitment guidelines, the violent nature of the offense, Emmanuel’s criminal history, and his noncompliance with standard probation in deciding that no “less restrictive alternative[]” would be appropriate. *See* Ariz. Code of Jud. Admin. § 6-304(C)(1)(c). Because the court acted within its broad discretion to determine the most appropriate disposition for Emmanuel in light of his unique circumstances, we find no abuse of discretion. Therefore, we affirm the juvenile court’s disposition order, committing Emmanuel to ADJC.

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

PHILIP G. ESPINOSA, Judge

GARYE L. VÁSQUEZ, Judge